

February 4, 1964

Memorandum to: Mr. Monsarrat

cc: Mr. Glynn  
Mr. Charnas  
Mr. Hylan  
Miss Jones  
Mr. Devine  
Mr. Zimbert  
Mr. Pratt

In accordance with our conversation, I have reviewed with the 3 networks the possibility of escape clauses in our network television contracts.

All 3 networks take the position that they will not grant any relief to cigarette advertisers unless the sale and/or advertising of cigarettes becomes illegal or unless the advertising of cigarettes in the particular time period and/or program ordered is in violation of applicable FTC or FCC regulations.

I have asked each network if they would agree to a release if FTC regulations severely limited the effectiveness of television advertising and either

- (1) we cancelled all network television advertising; or
- (2) the sales of the particular brand involved in the two week period immediately following the effective date of such regulations dropped 25% or more.

The networks are unwilling to grant an escape clause on either basis outlined above or on any other basis. It is their position that the cigarette advertisers must assume the risk of limitations being imposed on the effectiveness of their advertising, and that this cannot be passed on to the network.

I have also discussed with the networks their position if the tobacco industry should attempt any self-imposed restrictions on the content and/or time of advertising. Again, it is the networks position that such restrictions could not be the basis for any contractual relief from pre-existing commitments.

We could, of course, attempt to negotiate escape clauses on individual orders, and it is possible that ABC would give us some protection in connection with a large order. However, from my conversations with NBC and CBS, I think it is extremely doubtful that any agreement could be obtained from them.

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There are, of course, some network programs that are offered with 13 or 26 week termination rights, and it is in some cases possible to secure 13 week termination rights by paying a higher cost per minute. NBC sold a number of programs on this basis last year and is offering some programs on this basis this year but again, will not allow any special escape rights for cigarette advertisers.

TBW

Thornton B. Wierum/js